IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15345 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATWARLAL PITAMBARDAR PATEL

Versus

A.B.TRIVEDI

Appearance:

1. Special Civil Application No. 15345 of 2004

MR B.S.PATEL, FOR MR CHIRAG B PATEL for the Petitioner

MR AD OZA, GOVT. PLEADER for Respondent No. 1

MR SK JHAVERI, SR.ADVOCATE for Respondent No. 2

MR PK JANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 17/03/2005

C.A.V. JUDGEMENT

1. Natwarlal Pitambardas Patel, petitioner, has

filed this petition with a prayer that this Court may issue a writ of mandamus or any other appropriate writ, order, or direction quashing and setting aside the order passed by respondent No. 1 dated 25.11.2004, rejecting the nomination paper of the petitioner as per the proceedings at Annexure-A to the petition and direct respondent No. 1 i.e. Election Officer & Deputy Collector to declare the petitioner as elected Chairman of respondent No. 2 bank i.e. Mehsana District Central Co-operative Bank Ltd., Mehsana.

1.1 The petition was filed on 29.11.2004. This Court (Coram: Jayant Patel, J) issued notice on 2.12.2004. Pursuant to the said notice on behalf of respondent No. 1 Mr. A.D. Oza, learned Government Pleader appears. Mr. S.K. Jhaveri, learned sr. advocate, appears on behalf of respondent No. 2 and Mr. P.K. Jani, learned advocate, appears on behalf of respondent No. 3 i.e. Shri Nitinbhai Ratilal Patel. On the joint request of the learned counsel for the parties, I have taken up the matter for hearing. Hence Rule. The learned counsel for the respondents waive service of Rule.

2. The facts giving rise to the petition are as under:

2.1 The petitioner is a leading cooperative worker. The petitioner is connected with many other cooperative societies right from the village level to national level. It is the case of the petitioner that a criminal complaint had been filed in Visnagar Police Station by the Visnagar Nagrik Sahakari Bank Ltd. against one Shakalchand Castor Complex Co-operative Society. The petitioner was the director of the said society. So the petitioner had also been shown as an accused. After thorough investigation the police submitted the charge-sheet and made the report to the learned Judicial Magistrate First Class, Visnagar that the petitioner is not directly involved either in conspiracy or in any other offences but as the petitioner was directed and had not prevented other directors in mismanaging the affairs of the society, hence the petitioner has also been prosecuted for the offences punishable under Sections 406, 420, and 114 of the I.P.C.

2.2 It is the case of the petitioner that (Nitinbhai Ratilal Patel), respondent No. 3 sent an application on 12.10.2004 to the Election Officer and Deputy Collector, Mehsana District, (respondent No. 1) informing him to get the petitioner arrested at the time of filing of nomination paper by the petitioner, failing which,

respondent No. 1 shall be held responsible.

2.3 It is the case of the petitioner that respondent No. 1 has rejected the nomination paper of the petitioner on the ground that the petitioner has been served with the notice under Section 110(h) of the Act by the liquidator of the Visnagar Nagrik Sahakari Bank Ltd. While in fact, the notice has been issued to the society and guarantors and copy of the same has been forwarded to the petitioner as a director but, till today, the liquidator has not determined any amount against anyone.

2.4 Being aggrieved and dissatisfied with the said action, the petitioner approached this Court by filing Special Civil Application being Special Civil Application No. 14146 of 2004 challenging the rejection of nomination paper. This Court (Coram: M.R. Shah, J) rejected the Special Civil Application on 26.10.2004 on the ground that the petitioner has alternative efficacious remedy provided under law by way of filing Election Petition under Section 145U of the Act which provides disputes relating to elections to be submitted to the Tribunal.

2.5 It is the case of the petitioner that the petitioner has also been nominated as director in respondent No. 2 bank by the Gujarat State Co-operative Bank Ltd. and under the provisions of bye-law 32 read with bye-law 33, the petitioner is entitled to vote and contest the election for the post of Chairman and Vice Chairman of respondent No. 2 bank.

2.6 It is the case of the petitioner that respondent No. 2 Bank issued an agenda on 25.11.2004 for holding election under Section 145Z of the Act which provides special provision for election of officers of specified societies. The learned counsel for the petitioner has invited my attention to the notice dated 11.11.2004 issued by Mehsana District Central Co-operative Bank, Mehsana. A meeting of Mehsana District Central Co-operative Bank Ltd. - newly elected members of the Board meeting was fixed on 25.11.2004 for conducting the following items:

(i) To elect the President of the Governing Body of Mehsana District Central Co-operative Bank Ltd.

(ii) To elect the Vice President of the Governing Body of the Mehsana District Central Co-operative Bank Ltd.

2.7 In view of the same, the learned advocate stated that Gujarat State Co-operative Bank Ltd. and the petitioner filed Lavad Case No. 1939 of 2004 on 24.11.2004 and the Board of Nominee granted ad-interim stay in favour of the Gujarat State Co-operative Bank Ltd. as well as the petitioner to the effect that respondent Nos. 1 and 2 may not prevent the petitioner from participating and contesting the election in the meeting dated 25.11.2004 and on subsequent meeting i.e. for election for the Chairman and Vice Chairman. The said interim order was granted upto 29.11.2004. The Court issued notice returnable on 29.11.2004.

2.8 It is the case of the petitioner that respondent No. 1 at the instance of respondent No. 3 - Ex-Finance Minister of BJP ignored the order passed by the Board of Nominee and did not obey the order and permitted the petitioner to cast the vote by misinterpreting the bye-law No. 32(7) which is produced at Annexure-E to the petition and rejected the nomination paper of the petitioner as well as other candidate which was not the valid nomination paper and postponed the election.

2.9 Being aggrieved and dissatisfied with the aforesaid action, the present petition was filed on 29.11.2004.

3.0 During the pendency of the petition, the petitioner has sought for amendment of the petition on 2.12.2004 and the amendment has been granted.

3.1 It is the case of the petitioner that in a judgement in the case of RASIKLAL VS. KAILASGAURI reported in (1971) 12 GLR 355 a Division Bench of this Court (Coram: P.N. Bhagwati, C.J. (as he was then) and D.A. Desai, J (as he was then)), in para 25 on page 376 it appears that the Division Bench has considered the position of registrar, and Mr.Patel, learned advocate for the petitioner stated at Bar that the Division Bench has called upon late Shri J.M.Thakore, who was learned Advocate General at the relevant time, and he has made a statement (same is no part of the judgment of the Division Bench), however, it appears that some statement on behalf of the Government has been recorded and thereafter the Division Bench has observed in para 25 on page 376 as under:

"As a matter of fact we are told that now a policy has been adopted by the State Government

> to appoint a board of nominees consisting of retired Judges to decide disputes referred to the Registrar. This is a very healthy step taken by the State Government and we have no doubt that it will go a long way towards restoring the confidence of the public in the fairness, efficiency and purity of administration of justice under the special procedure provided by the impugned sections which by reason of ill-considered appointments of nominees in the past was badly shaken. The absence of prescription of minimum qualification to be possessed by a nominee does not in the circumstances have the effect of making the machinery of adjudication unreasonable."

3.2 It is the case of the petitioner that in spite of assurance given to this Court, the Joint Registrar is working as Nominee and all are subject to the transfer at the instance of Government. It has been alleged that present party in power is deadly against the petitioner right from the election of GUJCOMASOL and Mehsana District Co-operative Union. The present party in power tried to prevent the petitioner from being elected. However, the petitioner has been elected unanimously. With the help of respondent No. 1 they could succeed in preventing the petitioner from occupying the post of Chairman of respondent No. 2 Bank, otherwise the petitioner would have been declared uncontested hence even though alternative efficacious remedy provided under Section 96 of the Act is available, it has become illusory for the petitioner. So the petitioner has got no such alternative remedy which is illusory so he has no reasons except to file the present petition.

3.3 It is stated that the present Nominee at Mehsana before whom the petitioner has to file Lavad Case under Section 96 of the Act is Mr. A.B. Gadhavi against whom the petitioner has filed contempt proceedings and on the strength of the order passed by this Court in the contempt proceedings he has to remain present. Mr. A.B. Gadhavi, Mr. K.H. Rathod and Mr. Kaushik Joshi all had worked with respondent No. 2 bank which clearly reveals that if the petitioner is approaching the Nominee under Section 96 of the Act, he will have to go from pillar to post and the petitioner would not be in a position to get substantial justice.

3.4 It is further submitted that independence of judiciary is basic feature of the Constitution of India and in order to ensure impartial and meritorious

appointment, the control over such appointment is vested in the High Court as provided under the provisions of Article 235 of the Constitution of India. As directed under Chapter VI and more particularly, Article 233, 234 and 235 of the Constitution of India, it was submitted that neither in appointment of Board of Nominee nor in appointment of the Tribunal the provisions of Chapter VI including Articles 233, 234 and 235 of the Constitution are complied with. In order to secure independence of the nominee and the tribunal the basic requirement is the security of the tenure and other service conditions. The members of the Board of Nominee are appointed only from the Co-operative Department who are either Class III or Class IV employees of the Co-operative Department of the State Government and they are interchangeable and under the control of the Co-operative Department. In the appointment of the President of the Tribunal or the Members of the Tribunal no security regarding the tenure of the service or other service conditions are provided. The Presidentship of the Tribunal is offered to retired District Judges on the basis of the tenure as per the pleasure of the Government or maximum for a period of one year. Mr. Jadav, retired Joint District Judge who has been appointed as President of the Tribunal is given appointment only for a period of one year. Other two Members of the Tribunal are Class I Officers of the Co-operative Department and they are interchangeable and under the control of the Co-operative Department. Such Members can hardly function as independent Members in view of the fact that they are employees of the Co-operative Department.

3.5 It is stated that in the year 1981, radical changes were made in the Act by introducing Act No. 6 of 1981 providing for Specified Co-operative Societies and the Election disputes regarding the management of such specified co-operative societies to be referred to the State Government. However, subsequently, it was realised that entrusting the adjudicative machinery to the State Government for election disputes is unconstitutional, amended Section 145U of the Act by substituting the word "Tribunal" in place of "State Government". It was submitted that though the aforesaid amendment was made with an intention to create independent machinery for adjudication of the election disputes, the aforesaid purpose is frustrated by the appointment of the Tribunal in a manner violative of the very concept of independence of judiciary.

3.6 The learned counsel for the petitioner has invited my attention to Section 74C of the Act which

provides for provision for conduct of elections of committees and officers of certain societies and term of office of members of committees. The said Section provides that election of members of the committees and of the officers by the committee of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by and under that Chapter - one of the societies is all District Central Co-operative Banks and therefore the provisions of the said Section will be applicable to the petitioner society. The learned advocate for the petitioner therefore invited my attention to Chapter XI-A which provides elections of Committees and Officers of certain societies. The said Chapter contains Section 145A which provides application - all sections of this Chapter except Section (145Z) shall apply to elections to committees of societies belonging to the categories specified in Section 74C. Section 145B provides definitions. Section 145B(b) defines "election" which means election of a member or members of the committee of a specified society. Clause (c) of Section 145B provides "specified society" which means a society belonging to any of the categories specified in Section 74C. Section 145C of the Act provides time when election to be held. Section 145D of the Act provides conduct of elections. Section 145F of the Act provides disqualification for membership. Section 145U of the Act provides disputes relating to elections to be submitted to the Tribunal. Section 145U(1) reads as under:

"Notwithstanding anything contained in Section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the Tribunal."

3.7 Section 145Y provides power to make rules for purposes of this Chapter. Section 145Z provides special provision for election of officers of specified societies. Section 145Z reads as follows:

"(1) This section shall apply only to election of officers by members of committees of societies belonging to the categories specified in Section 74C.

(2) After the election of the members of the committee or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws, but any meeting of the committee for

this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

3.8 Rule 78 of the Gujarat Co-operative Societies Rules, 1965, provides regarding the qualification and other conditions of the Members of the Tribunal. The aforesaid Rule nowhere prescribes the tenure of the service either of the President or of the Members of the Tribunal. It is submitted that the provisions of the Act and the Rule nowhere guarantee independence of judiciary which is a basic feature of the Constitution of India.

3.9 The learned counsel for the petitioner states that The Mehsana District Co-operative Bank Ltd., Mehsana, has enacted bye-laws. Out of that bye-law 32(1) which provides for Board of Directors, bye-law No. 33(1) provides election of the society and other bye-laws he has relied on. The learned counsel states that the important questions of law in this petition are whether the Presiding Officer under Section 145Z of the Act has any authority to decide the validity of nomination of the candidate, the officer appointed under Section 145Z of the Act is not a Returning Officer, he is only an officer who conducts the matter. It was stated that under the provisions of the Act all members have only one vote and the Presiding Officer has no right to vote.

3.10 The learned counsel for the petitioner has invited my attention to the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 particularly, Rule 9 which provides appointment of Returning Officers (hereinafter referred to as "1982 Rules"). Rule 10 provides appointment of Assistant Returning Officer. Rule 13 provides appointment of Presiding Officers and Polling Officers. Rule 15 provides control i.e. the Returning Officer, Assistant Returning Officers, Presiding Officers, Polling Officers and other persons appointed for any of the purposes of these rules shall work under the general guidance, superintendence and control of the Collector. Rule 17 provides manner of publication of order under Rule 16. Rule 18 provides nomination of candidates. Rule 19 provides presentation of nomination paper and requirements for valid nominations. Rule 31 provides uncontested elections. Rule 31 reads as under:

"If, after the expiry of the period within which candidature may be withdrawn under sub-rule (2) of rule 25, the number of candidates in the constituency whose nominations have been accepted

is equal to or less than the number of seats to be filled, the Returning Officer shall forthwith declare such candidate or all such candidates to be duly elected to fill the seat or the relevant number of seats, as the case may be and shall complete and certify the declaration in Form VII, and where the Returning Officer is not the Collector himself he shall send signed copies thereof to the Collector."

3.11 The learned counsel after referring to agenda and meeting dated 25.11.2004 and order of Board of Nominee dated 24.11.2004, has invited my attention to the order passed by the Additional Secretary, Mehsana District Co-operative Society Ltd., dated 25.11.2004 where the authority has relied on the order of the Board of Nominees dated 24.11.2004 and the application filed by Natwarlal P. Patel and stated that as per bye-law 34(3) application of Natwarlal P. Patel has been declared invalid and therefore he is not entitled to participate in the meeting of Board of Directors. The learned advocate has invited my attention to other provisions of the Act. It has been contended that earlier the Election Officer has passed order dated 23.10.2004 which has been upheld by the High Court where it has been stated that the petitioner can cast vote in the election of Board of apex Bank. The District Registrar, Mehsana District Co-operative Bank has objected to the same. It has been stated that as per the bye-laws and Section 32 of the Act only Natwarlal P. Patel can vote. It has been held that in view of Section 145Z and bye-law 32(1) and 32(7) only elected persons can contest election of Chairman/Vice Chairman. It was stated that Natwarlal Patel has not been nominated and therefore he cannot stand in the election. Therefore, the Tribunal has not accepted Natwarlal Patel as President of the Society. As per the bye-laws the only agenda is for having election of the elected members and there was no other proposal from elected members. The request is therefore rejected. It was further stated that Shri Dahyabhai P. Patel and Leelachandbhai V. Patel were supported by Vithalbhai Madhavlal Patel. It was held that Leelachand V. Patel was elected for three years and till he is elected, the candidature of Vithalbhai Madhavlal Patel is selected.

3.12 The learned advocate has further submitted that under the provisions of section 74-C(3) which starts from Non-obstante Clause "notwithstanding anything in the bye-laws of any society", while Section 145-Z clearly provides "shall be held as provided in its bye-laws". This difference clearly provides that Election of

Chairman and Vice Chairman is required to be held as per the provisions of the bye-laws and in the instance case Annexure "E" the Booklet of bye-laws where under the Bye-law No.33(1) (Page No.13) clearly provides that the Directors present in the meeting can elect the Chairman and Vice Chairman and there is no bar for any director in participating in the Election.

3.13 In the Booklet at Annexure "E" to the petition on page no.12, the Bye-law No.32(1)(1A) one representative of Apex Co-operative Bank is required to be nominated and he shall be having the same standard so the same rights and liabilities of a nominated director under the Act. Section 80 of the Act clearly provides that nominated members shall have all rights, duties, responsibilities and liabilities, as if, he were the member of the committee duly elected. The petitioner has been given the status of duly elected director under the bye-laws along with the provisions of section 80 of the Act. In that event, the action of respondent No.1 is apparently against the provisions of the Act and the Bye-laws.

3.14 Section 145-D (4) clearly provides that no election in case of Financing Agency and admittedly Gujarat State Co-operative Bank Ltd. is the financing agency of the Mehsana District Co-operative Bank Ltd. In that event, as the Act does not provide any election but at the same time the Gujarat State Co-operative Bank Ltd. can only nominate its director as nominated director in the Mehsana District Co-operative Bank Ltd. The petitioner is an elected director of the Gujarat State Co-operative Bank Ltd. hence, it can not be said that the petitioner is not an elected director.

3.15 Section 145-A clearly provides that it applies to all sections of the Chapter XI-A except section 145-Z. The election in question is under Chapter XI-A but under Section 145-Z clearly provides, "any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf." Hence section 145-Z has conferred only powers to preside over the meeting not of Election Officer or the Returning Officer. The election officer and returning office is clearly provided under section 145-D but the said section is not applicable in the election under sec.145-Z. The Collector have been conferred with the powers for scrutiny of nomination paper and have got right to accept or reject the nomination paper under the provisions of Rule-23 of the Gujarat Specified Co-operative Societies Election to Committee Rules, 1982. The powers are conferred on Returning Officer not on the Collector.

Under Section 145-Z no powers have been conferred on Collector and even under the Act and Rules the powers to decide the validity of the Nomination paper is only with the Returning Officer but with no other authority. In that event, the action of deciding the validity of the nomination paper is apparently without jurisdiction by the respondent No.1.

3.16 The petitioner has neither stood as guarantor of the Karmavir Sakalchand Patel Castor Co-operative Society nor he is responsible for the dues of such society. Even though it was brought to the notice of the respondent No.1 the judgment delivered by the Division Bench of this Court (Coram: D.M. Dharmadhikari, C.J. (as he was then) and C.K. Thakkar, J (as he was then) in LPA No.190/1995 in the case of Ahmedabad District Co-operative Bank Ltd. Vs. New Jashpark Co-operative Housing Sty. Ltd. decided on 25.1.2000, without following binding decisions he had rejected the nomination paper of the petitioner. The petitioner approached the tribunal and the tribunal has directed the respondent no.1 to complete the election within 15 days by an order which is on page 82 of the petition but till today the respondent no.2 has not obeyed the order passed by the tribunal.

SUBMISSION OF SHRI S.K.JHAVERI ON BEHALF OF RESPONDENT NO.2:

4.0 Mr.S.K.Jhaveri, learned sr. Counsel for the respondent No.2 has supported the case of the petitioner. He has invited my attention to the affidavit of one Ambalal S. Patel dated 29.12.2004, who is Manager of Mehsana District Central Co-operative Bank Ltd., Mehsana. Mr.Jhaveri, learned sr. counsel has submitted following points:

4.1 In respect of specified societies under Sec.74-C, election of the members of the Managing Committee is to be conducted in the manner laid down in Chapter XI-A of the Act. The members are to hold office for three years. Said section also provides that Committee of Management is to be elected by general body of the members of the society. But it has specifically made an exception by making the proviso to sub-section (3) to the effect that where the bye laws of the society provides that anybody or authority is to nominate its representative on the committee it shall be lawful. It is, therefore, apparent that the appointment of the representative of the State Bank is lawful inasmuch as its bye laws so provide. It is, therefore, evident that Shri Natwarlal P.Patel is

nominated by the apex Bank i.e. Gujarat State Co-op. Bank Ltd. as per bye law 32(1)(A). As per said bye law he has not only right to vote but shall also have all rights, duties, responsibilities and liabilities as if he was a member of the committee duly elected in accordance with the provision in section 80 of the Act. Chapter XI-A of the Act lays down that the election is to be conducted in the manner laid down by or under that chapter. Now, first section is that chapter i.e. section 145 A excludes section 145 Z and all other sections are made applicable to election to committees of said societies. Section 145-Z is excluded in as much as it confines itself to the election of officers by the managing committee (hereinafter referred to as the "Board"). This section requires to hold the election of the officers as provided in its bye laws. Bye law 33(1) provides that the President and Vice President shall be elected in its first meeting of the Board to be held after the election of the Board of Directors. Thus, in view of Section 145-Z that first meeting is to be presided over by the Collector or an officer nominated by him. But Collector has no right to vote in that meeting nor can exercise any other right or power save and except proper conduct of the said first meeting.

4.2 It may be noted that under this Chapter XI-A in section 145-D the Collector is required to fix the dates of election and the said election is to be conducted under his control by such returning officer and other officers to be appointed by him. In election process, returning officer is the authority to scrutinise the nomination paper and decide upon the validity or otherwise of the candidate. But in case of election of officer bearer it is to be held as provided in the bye law and the bye law provides for election of the President and Vice President in the first meeting of the Board. Only exception is that it is to be presided by the Collector or his nominee. Hence there is no question of going into the validity or otherwise of the candidate in as much as a member of the Board is by itself eligible to contest and his being a member is to be in accordance with bye laws read with second proviso to sub-section (3) of Section 74-C. It is, therefore, submitted that under section 145-Z Collector or his nominee has to preside over that meeting to see that it is duly conducted. It may be noted that in other meetings of the Board under the bye laws the President has the casting vote hence the Collector who is not a member of the Board is to preside so that no member of the Board has double vote in the nature of casting vote in case of tie.

4.3 The learned Counsel has further stated that it is correct that Manager of respondent No. 2 Bank had issued an agenda for meeting for holding the election of Chairman and Vice Chairman. The Manager has stated that the meeting had been held on 25.11.2004. The petitioner had served an injunction order issued by the Board of Nominees, Ahmedabad to the Bank as well as to respondent No. 1. Being the bank, the bank is of the clear opinion that under the bye-laws 33 all the members of the Board of Directors are entitled to become the Chairman or Vice Chairman of the Bank. The learned counsel has stated that the petitioner had been elected as director of the Gujarat State Co-operative Bank Limited and the Board of Directors of the Gujarat State Co-operative Bank Ltd., sent the name of the petitioner as Director on behalf of the State Co-operative Bank in respondent No. 2 bank. The learned counsel has stated that petitioner is also director and as per the bye-law No. 32, he has got all rights, duties, responsibilities and liabilities, as if, he is the member of the committee duly elected. In that event, the entire Board of Directors barring negligent minority, was of the opinion that the petitioner can contest the election and proposed him for the post of Chairman of respondent No. 2 Bank. According to respondent No. 2 bank this is correct interpretation of bye-law Nos. 32 and 33. Unfortunately, respondent No. 1 had not accepted the contentions of the bank and had acted as per the desire of respondent No. 3.

SUBMISSION OF MR.P.K.JANI ON BEHALF OF RESPONDENT NO.3

5. Mr. P.K. Jani, learned advocate for respondent No. 3 has invited my attention to the affidavit filed by respondent No. 3 dated 16.12.2004. He took a preliminary contention that in this case the petitioner has sought relief that the order passed by respondent No. 1 rejecting the nomination of the petitioner as per the proceedings at Annexure-A to the petition be quashed and set aside. He stated that in essence the petition seeks to deal with election dispute. The case of the petitioner is that he be declared as elected Chairman of respondent No. 2 Bank. This dispute, according to respondent No. 3, would fall within the domain of Section 96 of the Gujarat Co-operative Societies Act, 1961, and therefore, since the petitioner has alternative efficacious remedy provided under the law for adjudication of his election dispute, this Court may refuse to exercise its extraordinary, discretionary jurisdiction in favour of the petitioner. He has invited my attention to the following facts in support of his contention.

5.1 11th October, 2004, Election programme was published.

5.2 21st October, 2004 - Scrutiny of nomination papers.

5.3 23rd October, 2004 - petitioner's nomination form to contest the election as such was rejected.

5.4 26th October, 2004 - petitioner filed Special Civil Application No. 14146 of 2004 before this Court and in the said petition the petitioner challenged the legality and validity of the order passed by the Returning Officer.

5.5 26th October, 2004 - learned Single Judge of this Court disposed of the said writ petition.

5.6 Against the aforesaid order passed by the learned Single Judge, Letters Patent Appeal No. 1989 of 2004 was filed.

5.7 26th November, 2004 - A Division Bench of this Court disposed of the said Letters Patent Appeal. Order passed by the Division Bench is reproduced hereinbelow:

5.8 "The learned counsel for the appellant says that the appellant will be satisfied if the Tribunal is directed to decide the Election Petition expeditiously and would withdraw the appeal if such a direction is given. Since it is an Election Petition pending before the Gujarat State Co-operative Tribunal, it is expected of the Tribunal to decide and dispose it of expeditiously, preferably within six weeks. In this view of the matter, learned counsel for the appellant seeks permission to withdraw the appeal. The appeal stands disposed of as withdrawn without going into the merits of the matter. Notice is discharged with no order as to costs."

5.9 10th December, 2004 - Election Petition No. 3 of 2004 preferred by the petitioner before the Gujarat State Co-operative Tribunal came to be allowed by the learned Members of the Gujarat State Co-operative Tribunal, Ahmedabad, by judgement and order dated the 10th December, 2004. The operative order passed by the Gujarat

State Co-operative Tribunal in the said Election Petition is reproduced hereinbelow:

5.10 "Election petition No. 3/04 is hereby allowed. The decision of the Election Officer for rejection of nomination of petitioner by order dated 23.10.2004 is quashed and set aside. The election held for the constituency of other societies is set aside and the Election Officer is directed to publish further programme of election including the name of the petitioner as the valid contesting candidate and conduct election within 15 days for the remaining stages starting from the date of publishing the list of valid candidates. No order as to costs."

6.0 In view of the same, he submitted that the petitioner has the right to contest the election and therefore the proceedings initiated by the petitioner are absolutely without any basis and this petition may be rejected.

6.1 The learned counsel submitted that the Presiding Officer has rightly not permitted the petitioner to contest the election of Chairman as the same would be in contravention of the provisions of the Act, Rules and the bye-laws of the bank. It is further stated that the nomination form having been rejected at the relevant point of time, the petitioner was held to be not eligible to contest the election. If a person who is declared not eligible to contest the election, by another mode cannot become the Chairman of the bank.

6.2 The learned counsel for the respondent has relied on the judgement of the Hon'ble Supreme Court in the case of SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA AND ANOTHER VS. STATE OF MAHARASHTRA AND OTHERS reported in (2001) 8 SCC 509. In the said case the Hon'ble Supreme Court considered the provisions of Maharashtra. In para 12 on page 518 of the said judgement, the Hon'ble Supreme Court has observed as under:

"In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of

rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

6.3 The learned counsel for the respondent submitted that in this case the petitioner has made allegations against respondent No. 4 that he is a political rival and therefore the authority has passed order not on the basis of statute but on extraneous consideration. He therefore submitted that this ground has no force and in a democratic set up this type of argument this Court should not believe. In support of the same, he has relied on para 13 of the said judgement.

6.4 He has further relied on the judgement of the Hon'ble Supreme Court in the case of MANDA JAGANATH Vs. K.S. RATHNAM reported in AIR 2004 SC 3600 in which at para 12 on page 3604 the Hon'ble Supreme Court has observed as under:

"In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only."

6.5 In paragraph 21 on page 3606 of the said judgement the Hon'ble Court has further observed as follows:

"We are not recording any conclusive opinion in regard to the applicability of the above statute, Rules and Orders because, as stated above, it is a matter to be decided in an election petition. Suffice it to say that the High Court on facts of this case, could not have interfered with the decision of the Returning Officer to reject Form B filed by the first respondent."

FINDINGS AND CONCLUSIONS:

7 As stated earlier in this case Special Civil Application No. 14146 of 2004 decided by this Court

(Coram: M.R. Shah, J) on 26.10.2004. The Court held that the petitioner has an alternative remedy by way of an election petition after the election is held and the wrong rejection of the Nomination paper by the Returning Officer vide order dated 23.10.2004 can be a ground to be urged by the petitioner for setting aside the election. The Court held that if on a wrong appreciation of evidence and/or documents there is any illegality or irregularity then at the most it can be said to be a rejection of the Nomination paper wrongly but it cannot be said that the order passed by the Returning Officer is without any jurisdiction. Therefore, considering the facts and circumstances of the case, the case does not fall within the exception carved out by the Hon'ble Supreme Court while entertaining the petition under Article 226 of the Constitution of India.

7.1 It may be noted that from the aforesaid judgement/order, it is clear that the petition was rejected only on the ground of alternative remedy. However, respondent No. 1, (as observed earlier) has held that during election process, as per bye-law 32(7) he rejected the nomination papers of the petitioner by his order dated 23.10.2004 which has been upheld by this Court. It was submitted that this Court has not upheld the decision of the authority but rejected only on the ground of alternative remedy and therefore the observation that the order of the authority has been upheld by the High Court is not correct.

7.2 I also consider the provisions of the Act, particularly, Section 145A of the Act which provides that all sections of this Chapter except Section 145-Z shall apply to elections to committees of societies belonging to the categories specified in Section 74C. Section 145B of the Act which provides definition. Section 145D(4) of the Act provides that no election shall be held in the case where under the bye-laws of a specified society the Government nominee or the nominee of a Financing Agency becomes a member of the committee of the society. Section 145Y of the Act provides powers to make rules for purposes of this Chapter which provides without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to various stages of the elections (including preparation of the list of voters). In exercise of powers conferred under Section 148 read with Sections 145G and 145U and 145Y of the Gujarat Specified Co-operative Societies Elections to Committee Rules, 1982, the election preparation of list

of voters, rule would include provision of preparation of voters' list also.

7.3 In view of Section 145Z of the Act which provides special provision for election of officers of specified societies that this Section shall apply only to election of officers by members of committees of societies belonging to the categories specified in Section 74C. The Section 145Z(2) of the Act provides that after the election of the members of the committee or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws, but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf.

7.4 In view of the aforesaid provisions of the Rule and Act, the agenda issued by the bank which provides that only election of the President among elected members of the committee and also election of Vice President among elected members of the committee is not correct. The agenda overlooked the fact that the petitioner is nominated member of the Apex Bank and therefore he can also be considered to be elected member. The fact that the authority has not considered him as elected member in bad in law.

7.5 It was further held that regarding the dues of Visnagar Nagarik Sahakari Bank Ltd., the petitioner states that the petitioner has not stood as guarantor and on the contrary an inquiry had been held under Section 86 of the Act and the petitioner has been exonerated.

7.6 I have also considered the judgement of this Court in the case of Bhikhabhai Keshavlal Patel Vs. Election Officer, District Central Co-operative Bank Ltd., Mehsana and others reported in 2002(1) GLR 552 and stated that respondent No. 1 have got no right. In that case the Court has considered the judgement of this Court in Special Civil Application No. 5040 of 1999 decided on 24.7.1999 (Coram: M.S. Shah, J) and also judgement in the case of Surendrasinhaji Jorawarasinhaji Jhala Vs. Chief Election Officer, AIR 1969 Guj. 292 and also judgement of the Division Bench in L.P.A. No. 1031 of 1999 decided in December, 1999 and also another judgement of this Court in the case of Kanjibhai Babaldas Patel Vs. Election Officer of A.P.M.C., Visnagar reported in 2001(1) GLR 259. In para 3.6 this Court observed that Section 145U of the Act provides for filing of the election petition after the election is over. In this

case the election is still not over and this alternative remedy provided under the law. In para 4.7 on page 566, the Court observed as follows:

"In my view, the remedy provided under the Act by way of filing election petition cannot be said to be alternative, adequate and efficacious remedy when the authority has passed order contrary to the statutory provisions or ultra vires the provisions of the Act. This Court has jurisdiction to exercise writ jurisdiction under Art. 226 of the Constitution of India. Therefore, the order passed by the District Registrar is liable to be quashed and set aside."

7.7 I also consider the judgement of the Hon'ble Supreme Court in the case of ELECTION COMMISSION OF INDIA VS. ASHOK KUMAR AND OTHERS reported in (2000) 8 SCC 216. In para 32 on page 232 the Court has laid down the principle in this behalf. In paragraph 34 of the said judgement the Court has also laid down two principles on which the High Court should decide. It may be noted that the Hon'ble Supreme Court has held that such a dispute could have been raised before and decided by the High Court if the dual test was satisfied, namely, the first test that the order sought from the Court did not have the effect of retarding, interrupting, protracting or stalling the counting of votes and the declaration of the results as only that much part of the election proceedings had remained to be completed at that stage and the other test for which this Court is not concerned.

7.8 I also consider that though the petitioner has alternative remedy, if the order of the authority is found to have been passed on extraneous ground, apprehension of petitioner that appeal to State Government would be illusory is found to be justified. In support of the same, he has relied on the judgement of the Division Bench in the case of CHIMANBHAI P. TRIVEDI Vs. B.R. KATARA reported in 37(1) GLR 512 particularly para 6 on page 514.

7.8A I have also considered the judgement of the Hon'ble Supreme Court in the case of DEORAJ VS. STATE OF MAHARASHTRA reported in AIR 2004 SC 1975 in which at para 13 on page 1978 the Hon'ble Supreme Court has observed as follows:

"There was only one nomination filed which was found to be in order and was not withdrawn. The

time appointed for filing nominations, scrutiny and withdrawal was over. There was no contest. Nothing had remained to be done at the meeting of the Committee which was to be convened only for the purpose of declaring the result. Nothing was to be put to vote. Holding of a meeting was only for the purpose of performing the formality of declaring the appellant as elected."

7.9 I have considered all these facts and the decisions in this behalf. The Bank has filed the affidavit of Shri Ambalal S.Patel, Manager of the Bank, dated 29.12.2004. He has averred in the affidavit that, as per byelaw No.32(1)(A), the petitioner can participate and contest the election of Chairman and Vice Chairman of the Bank, since he has been nominated on the Board of Directors of the Bank by the Gujarat State Cooperative Bank Limited. The constitution of the Board of Directors, as per the byelaws, provides for nomination of State Cooperative Bank as one of its members. The Board of Nominees Court passed an order under which the petitioner was entitled to participate at the election of Chairman and Vice Chairman of the Bank. The Presiding Officer of the meeting to be held for the election of Chairman and Vice Chairman of the Bank is not an elected member of the Board of Directors and, as per Section 145Z, the duty of the person on the chair under Section 145Z is to simply conduct the election and nothing more than that. He cannot deny the right of the petitioner to contest the election on any ground whatsoever since it is for the meeting either to elect or not to elect the petitioner as Chairman if he contests for one of the posts.

7.9A I have considered the rival contention raised herein. I have also considered the contention of Mr. Jani, learned advocate, in connection with alternative remedy. However, in view of the provisions of the Act which I have discussed and in view of the judgement of the Hon'ble Supreme Court in the case of DEORAJ VS. STATE OF MAHARASHTRA (supra) and other judgements which I have discussed earlier, I am of the view that in this case the election is already over. The only question is of election of Chairman and Vice Chairman in the meeting to be held in this behalf. Quashing of the order and giving relief will not in any way retard, interrupt or stall the election process. In this case it is the case of the appellant that he is the only person so far as the contest of Chairman is concerned and he has prayed for mandatory relief. However, it will not be possible for this Court to grant mandatory relief because selection of

Chairman is in the hands of the members of the society. I, therefore, direct the members of the society to convene a meeting and decide the same in accordance with law.

7.10 The contentions raised by learned counsel Shri Jani have been considered by me and, as per the decision of this Court in the case of Bhikabhai Keshavlal Patel (supra), I am of the opinion that this Court can exercise writ jurisdiction in the present case. It cannot be said that the petitioner has an alternative efficacious remedy, because, in the present case, the authority has acted contrary to the provisions of the byelaws and the mandate given under Section 145Z of the Act. Section 145Z is very clear and does not confer any power, authority or jurisdiction on the Collector or his nominee to give any decision on the qualification and/or entitlement of one of the members of the Board of Directors, who comes forward to contest the election of Chairman and Vice Chairman of the Bank. Thus, he cannot debar a contestant from contesting the election of Chairman and Vice Chairman of the Bank, since he is a member of the Board of Directors as per the byelaws of the Bank. The mandate under Section 145Z is to hold the election as per the provisions of the Rules for holding election of the Board of Directors cannot be relied upon in the present case. The order and decision taken by the respondent No.1 is required to be quashed and set aside.

8. The Petition is allowed with no order as to costs. Rule is made absolute. The order passed by the respondent No.1 dated 25.11.2004 rejecting the nomination paper of the petitioner as per the proceedings at Annexure "A" to the petition is quashed and set aside. In view of the judgement of the Hon'ble Supreme Court in case of Deoraj Vs. State of Maharashtra and others, reported in AIR 2004 SC 1975, the respondent No.1 & 2 are directed to convene the meeting for holding election of the Chairman and Vice Chairman of the respondent No. 2 Bank in view of the discussion made in the judgement.

Date : 17.3.2005. (K.M.Mehta, J.)